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Via U.S. Mail

April 14, 2009

Karl J. Fingerhood  
United States Department of Justice  
Environment & Natural Resources Division  
P.O. Box 7611  
Washington, D.C. 20044

Taly L. Jolish  
Assistant Regional Counsel  
U.S. Environmental Protection Agency  
Region IX  
75 Hawthorne Street  
San Francisco, CA 94105

Re: United States v. Powerine, et al.

Dear Karl and Taly:

Enclosed with this letter are the responses to your discovery. As noted therein, we will work with you to get you the documentation that you require.

At the same time, I would like to give you an update regarding the status of this matter and to request a meeting to seek some sort of waiver or abatement of the stipulated penalties that are accruing. Powerine is very sorry that it has been unable to make the last payment due under the Consent Decree and wants to insure EPA that it is making every reasonable effort to obtain the necessary funds.

As you know, in about August, 2007, Powerine and other entities, Cenco Refining Company and Energy Merchant Corp. (collectively "Powerine") entered into a Consent Decree pursuant to which they agreed to make certain payments to the United States Environmental Protection Agency and the California Department of Toxic Substances Control in satisfaction of alleged liabilities associated with several Superfund sites. The Consent Decree was approved by the Court in March, 2008. All of the payments to DTSC were timely made and the obligations to DTSC have been fulfilled.

The initial payments to EPA of \$806,606, \$100,000 and \$93,394 were due and timely paid on May 13, 2008. The second payment of \$225,000 was due on July 9, 2008. Unfortunately, as discussed in more detail below, Powerine did not have sufficient funds to make this payment on that date. However, payment, with interest, was made on October 20, 2008. The third and final payment of \$225,000 was due on September 8, 2008. Unfortunately, Powerine has not had and still does not have the funds to satisfy this final payment.

Pursuant to the Consent Decree, significant stipulated penalties may be imposed for failure to make timely payments. The Consent Decree also provides that the United States may waive payment of any portion of the stipulated penalties that have accrued. Powerine respectfully requests a meeting to discuss its situation and to request a waiver of some or all of the stipulated penalties.



Powerine fully understands that it is pleading with empty hands. Unfortunately, however, Powerine is simply not in a position to make any additional payments at this time. Nevertheless, Powerine is firmly committed to making the final payment as soon as it has available resources.

We would like to provide an explanation of what occurred. First, it is important to keep in mind that, as EPA itself determined as part of its ability to pay determination, Powerine only has very limited sources of income. These sources primarily include insurance proceeds which are used to fund the ongoing investigation of the refinery site and a wastewater treatment operation, whose funds are used to pay salaries of those who maintain the refinery site so that the investigation, and ultimately the clean up, can proceed. Powerine does not have any other significant sources of revenue. At the same time, its monthly payroll and overhead is in the range of \$350,000.

Powerine made its initial consent decree payments in May, 2008, totaling in excess of \$1 million, using funds primarily obtained from equipment sales and an unrelated insurance settlement with one of its historic insurance carriers, CNA.

In late 2007, before any payments were due, Powerine entered into negotiations with Paladin Capital Group to provide funding for a bio-diesel operation, including a bio-diesel plant to be located at the refinery site to, among other things, generate income that could be used to pay for ongoing operations, site cleanup and the EPA settlement. Powerine invested a significant amount of money into the development and construction of a bio-diesel plant as part of this project. Under the deal, a new entity, Renewable Energy Products LLC was created. It is currently owned by EMC but the stock is pledged to Paladin which will receive the stock once it fulfills its funding obligations. Therefore, Paladin essentially has full control over the project.

Under the deal, Paladin was supposed to pay Powerine the approximately \$1.8 million, which was loaned by EMC to the project, when a feed stock deal for the project was signed. Powerine intended to use a portion of this to pay EPA. The feedstock deal was initiated in February and finalized in May, 2008. However, at that time the plant had not yet started up, so Paladin refused to pay Powerine the money that it owed. The construction took longer to complete than anticipated and there are permitting issues which have made it impossible to operate at anywhere near full capacity. In addition, the crude oil market has collapsed and the ability to operate the bio-diesel facility at a profit was marginal at best. Therefore, Paladin has refused to pay as required.

When the July 9, 2008 deadline arrived, Powerine thought that the Paladin payment would come "any day" and did not believe there would be any significant delay in making the July and September payments. Because of that, it did not immediately contact EPA to inform it of the problem.

Unfortunately, as noted above, Paladin continued to delay payments due. In August, after receiving an inquiry from the United States, we informed the United States of the payment problem and requested EPA's indulgence.

After pleading with Paladin to make a payment under the loan, on October 16, 2008, Powerine received \$250,000 from Renewable Energy Products and on October 20, used virtually all of the funds (\$231,643.40) to make the second payment to EPA. In August, Paladin also agreed to



make monthly payments on the loan and made certain payments on the note. However they failed to make all of the required payments to operate the business and failed to pay the agreed upon monthly payments. (The limited monthly payments that were paid were used to meet the payrolls for Energy Merchant Corp. and Lakeland). At this point, Paladin has failed to make \$722,000 in monthly payments and owes an additional approximately \$1.1 for operations. It also owes approximately \$200,000 additional on the note. However, they continue to refuse to make these payments.

Powerine has repeatedly reminded Paladin of its obligation and informed Paladin that its failure to pay is making it impossible to pay EPA. However, despite its contractual obligation and Powerine's attempts, Paladin has refused to make any additional payments, leaving Powerine without funds to pay EPA. Powerine is willing to provide assurance to EPA that as soon as any funds are made available by Paladin, they will be used to satisfy its obligations to EPA.

Powerine has also been attempting to enter into a development agreement with a remediation contractor for portions of the refinery site which would generate additional funds to be used to help pay for the cost of the refinery site cleanup and to satisfy its obligations to the EPA. Unfortunately, however, these negotiations have also been dragging on and no funds have been forthcoming.

Powerine would be more than willing to borrow funds to satisfy its obligations to EPA. However, given its terrible financial condition and the current state of the world economy, this is simply not possible.

We hope that in considering how to proceed you will keep in mind that Powerine has not simply flouted its obligations. It completely satisfied its obligations to DTSC and has paid approximately 85% of what it was required to pay EPA under the Consent Decree. It would make additional payments if it had the resource to do so. It has absolutely no desire to continue to incur penalties which well exceed the amount of the payment that remains due.

The bottom line is that Powerine would like to satisfy its obligations to the United States under the Consent Decree, but simply is not in a position to do so at this time. Powerine would like to meet with you to discuss this and to attempt to work out a resolution. Please call me at your earliest convenience to discuss this matter.

Sincerely,

A handwritten signature in dark ink, appearing to read "Albert M. Cohen", written in a cursive style.

Albert M. Cohen  
Partner

Enclosures